

### III. REMARKS

Claims 1-8 are pending in this application. By this amendment, claims 1, 7 and 8 have been amended. Applicants do not acquiesce in the correctness of the rejections and reserve the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

In the Office Action, claims 7-8 are rejected under 35 U.S.C. §112, first paragraph, as allegedly being non-enabling. Claim 1 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Brendel *et al.* (U.S. Patent No. 5,774,660), hereafter "Brendel," in view of Starnes *et al.* (U.S. Patent No. 6,510,469 B1), hereafter "Starnes." Claim 2 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable of Brendel in view of Starnes and further in view of Brendel (U.S. Patent No. 6,772,333 B1), hereafter "Brendel333." Claim 3 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Brendel in view of Starnes and Brendel333 and further in view of Pavan (U.S. Patent No. 6,801,943 B1), hereafter "Pavan." Claim 4 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Brendel in view of Starnes, Brendel333 and Pavan and further in view of Millard (U.S. Patent Pub. No. 2002/0087282 A1), hereafter "Millard," and further in view of Subramanian *et al.* (U.S. Patent Pub. No. 2002/0194211 A1). Claims 5-8 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Brendel in view of Starnes, Brendel333, Pavan, Millard and Subramanian and further in view of Colby *et al.* (U.S. Patent No. 6,625,643 B1).

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**A. REJECTION OF CLAIMS 7-8 UNDER 35 U.S.C. §112**

The Office has asserted that claims 7-8 fail to comply with the enablement requirement. Applicants have amended claims 7 and 8 to place them in independent form. Applicants assert that this amendment further satisfies the enablement requirement. Accordingly, Applicants request that the rejection be withdrawn.

**B. REJECTION OF CLAIM 1 UNDER 35 U.S.C. §103(a)**

With regard to the 35 U.S.C. §103(a) rejection of claim 1 over Brendel in view of Starnes, Applicants assert that the combined features of the references cited by the Office fail to teach or suggest each and every feature of the claimed invention. For example, with respect to independent claims 1 and 8, Applicants submit that the cited references fail to teach or suggest *inter alia*, that "...the any one server out of said plurality of individual servers is adapted to issue the load balancing instructions that affect any of the plurality of individual servers," and similarly claimed in claim 7 as "...the means for complying is adapted to comply with load balancing instructions that affect a second server out of the plurality of individual servers." The Office admits that Brendel does not explicitly teach this feature. Furthermore, the "Ready" message of Starnes is simply a message that informs the load balancer of the status of the particular server that sends the message. To this extent, the "Ready" message of Starnes does not pertain to any server in the network other than the server that sends the message.

In contrast, the claimed invention includes "...wherein the any one server out of said plurality of individual servers is adapted to issue the load balancing instructions that affect any of the plurality of individual servers." Claim 1. As such, unlike the Starnes server that sends a

ready message that pertains to its own status, the any one server of the claimed invention is adapted to issue the load balancing instructions that affect any of the plurality of individual servers. Thus, the "Ready" message in Starnes does not teach or suggest the load balancing instructions as included in the claimed invention. Brendel does not cure this deficiency. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

With further respect to independent claim 1, Applicants submit that the cited references fail to teach or suggest, *inter alia*, issuing load balancing instructions to said NCS. The Office admits that Brendel does not explicitly teach this feature. Instead, the Office equates the load balancing instructions of the claimed invention with the "Ready" message of Starnes. In doing so, the Office argues that "[t]he ready message or appropriately formatted message of Starnes is read as an instruction sent by the server to load balancer instructing the server to begin transmitting the requests." Office Action, page 2, par. 2. Applicants content that the "Ready" message of Starnes is not "an instruction sent by the server to load balancer" as the Office contends, but is instead a message that serves to inform the load balancer of the status of the server. To this extent, the "Ready" message is not an instruction in that the "Ready" message does not instruct the load balancer to do something, such as "Get Ready," but instead only informs the load balancer that the server is "Ready."

In equating the "Ready" message of Starnes with the load balancing instruction of the claimed invention, the Office overlooks the distinction between the passive nature of a statement of status (e.g., the "Ready" message) and the active nature of an instruction. For example, the statement of status "I am ready for more work," gives the receiver of the message discretion about what to do with the message. In contrast, the instruction "give me more work," actively

instructs the receiver to perform a specific function. To this extent, the "Ready" message of Starnes is not a load balancing instruction as included in the claimed invention. Accordingly, nowhere does Starnes teach or suggest issuing load balancing instructions to the load balancer.

In contrast, the claimed invention includes "...issuing load balancing instructions to said NCS." Claim 1. As such, the server as included in the claimed invention does not merely send an informative message such as the "Ready" message of Starnes, but instead issues instructions to the NCS. Accordingly, the "Ready" message in Starnes does not teach or suggest the load balancing instructions as included in the claimed invention. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

With still further respect to independent claim 1, Applicants respectfully submit that the cited references also fail to teach or suggest receiving said instructions in said NCS from said any one server; and complying with said instructions upon receipt. The Office admits that Brendel does not explicitly teach this feature. Office Action, page 3, point 6, par. 2. Instead, the Office attempts to rely on two passages of Starnes, which state, "[u]pon receipt of a "Ready" message the load balancer begins to transmit messages to the server component once again," and "[o]nce the single server component has returned a flow controlled message, the load balancer responds to send methods with a 'Server Component not Ready' return code. Col. 14, lines 34-36, 50-53. Thus, even though the load balancer in Starnes uses the indication of status received from the server, for example, a "Ready" message, to determine whether to transmit messages to the server component, the informational "Ready" message of Starnes cannot be said to have been complied with by the load balancer as Starnes does not teach that the load balancer will "Ready" itself or perform a "Ready" operation on something else. Therefore, the load balancer in Starnes cannot

be said to complying with an instruction received from the server. The claimed invention, in contrast, includes "...receiving said instructions in said NCS from said any one server; and complying with said instructions upon receipt." Claim 1. As such, the NCS of the claimed invention does not merely perform some function upon receipt of an informational message as does the load balancer in Starnes, but instead complies with instructions received from any one server upon receipt. As such, the complying with the instructions as included in the claimed invention are not taught or suggested by the performance of an action upon receipt of an informational message in Brendel. Accordingly, Applicants request that the rejection be withdrawn.

With further regard to the 35 U.S.C. §103(a) rejection of claims 1 and 2 over Brendel in view of Starnes, Applicants assert that there is no motivation or suggestion to combine the Brendel and Starnes references. Specifically, Starnes teaches that its server sends its load balancer a "Ready" message. Col. 14, lines 39-31. In contrast, Brendel teaches,

Outgoing packets do not go through load-balancer 54. The bandwidth of traffic through load balancer 54 is much less than through router 32 of FIG. 4 since only the relatively small incoming requests are routed through load balancer 54 while outgoing data bypasses load balancer 54. Col. 9, lines 60-64.

As such, the teaching Brendel that outgoing packets do not go through the load balancer teaches away from the sending of the "Ready" message to the load balancer of Starnes. Accordingly, Applicants submit that the Office has failed to prove a *prima facie case* of obviousness. As such, Applicants request that the Office's rejection be withdrawn.

With regard to the Office's other arguments regarding dependent claims, Applicants herein incorporate the arguments presented above with respect to the independent claims from which the claims depend. Furthermore, Applicants submit that all dependant claims are

allowable based on their own distinct features. Since the cited art does not teach each and every feature of the claimed invention, Applicants respectfully request withdrawal of this rejection.

### **C. REJECTION OF CLAIM 2 UNDER 35 U.S.C. §103(a)**

With respect to claim 2, Applicants respectfully submit that the cited references also fail to teach or suggest that the step of issuing instructions includes the step of: passing said instructions to said NCS in a NCS-control HTTP header, said passing step further including the steps of: including directives that must be obeyed by said NCS. Instead, as argued above, Starnes teaches that its server sends a "Ready" message to the load balancer. However, this "Ready" message of Starnes is not a directive to the NCS but merely informational status messages. Furthermore, the load balancer of Starnes acts independently to "...distribute the processing load for producing the accelerated version of the images amongst the available accelerators." Col. 8, lines 50-53. Nowhere does Starnes teach or suggest that its load balancer of Starnes must obey the "Ready" message. In contrast, the claimed invention includes "...the step of issuing instructions includes the step of: passing said instructions to said NCS in a NCS-control HTTP header, said passing step further including the steps of: including directives that must be obeyed by said NCS." Claim 2. As such, the directives of the claimed invention are not merely informational messages as is the "Ready" message of Starnes, but are instead directives that must be obeyed by the NCS. Furthermore, unlike the load balancer in Starnes the NCS of the claimed invention must obey the directives included in the instructions. Thus, the "Ready" message of Starnes does not teach or suggest the directives that must be obeyed by said NCS as included in the claimed invention. Accordingly, Applicants respectfully request withdrawal of the rejection.

**D. REJECTION OF CLAIMS 3-8 UNDER 35 U.S.C. §103(a)**

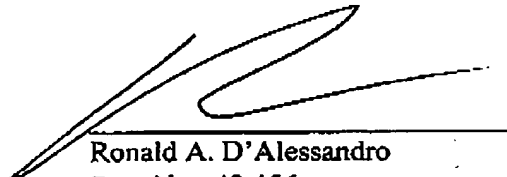
With regard to the 35 U.S.C. §103(a) rejection over Brendel in view of Starnes, Brendel333, Pavan, Millard, Subramanian, and Colby, Applicants assert that there is no motivation or suggestion to combine Brendel and Starnes with Pavan. Specifically, Brendel deals with load-balancing in a client-server environment to balance the load on a number of servers. Starnes uses a load balancer in conjunction with an apparatus for providing accelerated content delivery over a network. In contrast, Pavan deals with scheduling real time applications in a network environment "for the purpose of achieving correct deadline and priority based scheduling of network packets." Col. 2, lines 19-26. Accordingly, there is no intrinsic motivation or suggestion in any of the references or extrinsic motivation or suggestion to use the type of temporal scheduling aspects of Pavan with the structural load-balancing of Brendel and Starnes. Accordingly, Applicants respectfully submit that the Office has failed to prove a *prima facie* case of obviousness and respectfully request that the Office's rejection be withdrawn.

With regard to the Office's other arguments regarding dependent claims, Applicants herein incorporate the arguments presented above with respect to independent claims listed above. In addition, Applicants submit that all dependant claims are allowable based on their own distinct features. However, for brevity, Applicants will forego addressing each of these rejections individually, but reserves the right to do so should it become necessary. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

**IV. CONCLUSION**

In light of the above, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,



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